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**State Government Committee**

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**HB 3212**

**Brief Description:** Creating an open primary with voluntary party registration.

**Sponsors:** Representatives Hunt, McDermott, Conway, Veloria, Cooper, Hudgins, Darneille, Romero and Dickerson.

**Brief Summary of Bill**

- Creates a nominating primary that uses party ballots and voluntary party registration.
- Requires a major party to use the minor party convention process if the party prohibits unaffiliated voters from participating in its primary or seeks information on which party ballot an unaffiliated voter voted.
- Requires the state to switch to a qualifying primary if every major party is no longer eligible to use the public primary system.

**Hearing Date:** 3/5/04

**Staff:** Katie Blinn (786-7114).

**Background:**

Blanket Primary:

In 1935, the Legislature approved an initiative to the Legislature establishing Washington's blanket primary for partisan elections. All eligible registered voters may participate because there is no process to register by party. Candidates for partisan office, however, may designate an affiliation with a political party when they file a declaration of candidacy in July. For each office that appears on the ballot, voters may vote for any of the candidates running, regardless of the candidate's party affiliation. In order to advance to the general election, a candidate must receive the highest number of votes cast for candidates of that party, as well as at least 1% of all the votes cast for that office. Consequently, the blanket primary operates as a nominating process, in that only one candidate from each political party may proceed to the general election.

Precinct Committee Officers:

A precinct committee officer (PCO) is a publicly elected member of a major political party who represents the precinct in which he or she lives. Only the major parties are eligible to elect PCO's. The PCO's of a particular county make up the central committee for that county, and elect a

county chair and vice-chair. The chairs and vice-chairs from all the counties make up a party's state committee. PCO's are elected in the general election and serve terms of two years.

#### Minor Parties and Independent Candidates:

Minor party and independent candidates go through a separate process to appear on the primary election ballot. Minor parties and independent candidates must hold a nominating convention at the end of June to nominate a candidate for partisan office. Nomination requires both a nominating certificate and a nominating petition. The nominating petition must include the signatures of at least 200 registered voters if nominating a candidate for President, U.S. Senate, or any statewide office, and the signatures of at least 25 registered voters if nominating a candidate for any other partisan office. The independent or minor party candidate must still pay the filing fee and file a declaration of candidacy in July in order to appear in the primary in September. Like major party candidates, minor party and independent candidates must receive at least 1 percent of all the votes cast for that office in order to advance to the general election.

#### Litigation:

In 1996, voters in California approved an initiative that established a blanket primary modeled after Washington's blanket primary. However, one aspect of California's previous closed primary system, party registration, was retained. Four political parties in California sued the California Secretary of State, arguing that the blanket primary system is unconstitutional because it allows voters who are not affiliated with a political party to select that party's nominees, thereby violating the political parties' right to freely associate. The system was upheld in U.S. District Court and the Ninth Circuit Court of Appeals, but struck down in June 2000 by the U.S. Supreme Court in *California Democratic Party, et al. v. Jones*, 350 U.S. 567 (2000).

The Supreme Court noted that, with the right to associate is the right *not* to associate, and that the right of association would prove meaningless if associations could not limit control over their decisions to those who share their same interests. The Supreme Court affirmed that special protection is given to the process by which political parties selects their nominees since a nominee acts as a standard bearer and spokesperson for the party, communicating the party's ideology and preferences to the general public. The Supreme Court concluded that California's blanket primary violates the political parties' right of free association because it allows voters who are not affiliated with a party to participate in that party's nominating process.

In July 2000, the three major political parties in Washington, the Democratic Party, the Republican Party, and the Libertarian Party, sued the Washington Secretary of State. The political parties sought a permanent injunction prohibiting the Secretary of State from conducting any future partisan primaries under the blanket system. Finding that Washington election law and the Washington State Constitution were sufficiently different from California to distinguish the Washington lawsuit from the *California Democratic Party, et al. v. Jones* opinion, the U.S. District Court upheld the Washington blanket primary. However, in September 2003, the Ninth Circuit Court of Appeals reversed the District Court opinion and, based on the U.S. Supreme Court opinion, found the Washington blanket primary unconstitutional. *Democratic Party of Washington State v. Reed*, 343 F.3d 1198 (9th Cir. 2003). The Ninth Circuit remanded the case back to the District Court for entry of summary judgment, declaratory judgment, and an injunction in favor of the political parties. On February 23, 2004, the U.S. Supreme Court denied the State's petition for review.

## Summary of Bill:

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### Nominating Primary

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#### Party Registration:

A system of party registration is created. Voters are not required to designate a party affiliation in order to register to vote; party registration is optional. A voter may affiliate with only one party at a time, and may change party affiliation up to 30 days before an election. Party registration is available for minor parties, but a voter not registered as a member of a major party is considered an "unaffiliated voter", even if registered as a member of a minor party. If a voter registers by party, the information is public record. A voter who moves within a county may no longer change his or her registration address over the phone.

#### Filing for Office:

A candidate filing for partisan office as a major party candidate must be a registered member of that party at the time of filing. In addition, beginning in 2005, the candidate must either (1) be eligible to run under that party's rules, (2) collect signatures from at least 5% of the registered party members living in the jurisdiction, or (3) satisfy a signature requirement lower than 5% that is set in party rule. Percentage requirements are based on the number of registered party members living in a jurisdiction on March 1st. The candidates may begin to collect signatures as soon as they become a candidate, which is usually at the time of the first PDC filing.

#### Primary:

The partisan primary is for major political party candidates only. Registered party members may vote the party ballot for their own party and may not vote the party ballot for a different party. Each major party must decide by March 1st each year whether it will allow unaffiliated voters to participate in its primary. If a major party decides to prohibit unaffiliated voters from participating in its primary, the state chair must provide the Secretary of State a signed statement by March 1st.. If consent is given, votes cast by unaffiliated voters must be treated the same as votes cast by registered party members. Which party ballot an unaffiliated voter votes remains confidential. Information on how to register by party, that party registration is not required merely to register to vote, and whether each major political party is allowing unaffiliated voters to participate in its primary must be included in voter registration forms, ballot materials, voters' pamphlets, and websites.

#### Ballots:

A primary election primarily uses party ballots for each major political party. Each party ballot must list all partisan offices to be voted on, nonpartisan offices, and ballot measures to be voted on. Each registered party member may vote the party ballot specific to his or her party only. Unaffiliated voters may vote a party ballot as long as the party has not prohibited unaffiliated voters from participating. Only one party ballot may be voted. The order that names appear on the ballot remains at random, but county auditors no longer have to rotate the names. For 2004 only, the primary will be conducted entirely by mail statewide because of logistics issues in maintaining the secrecy of an unaffiliated voter's choice of party ballot.

#### PCO's:

PCO's are elected at the primary, rather than the general election, on party ballots. Statutes specifying how PCO's in King County are replaced, and requiring PCO's to receive at least 10 percent of the votes cast are repealed.

### Minor Parties and Independent Candidates:

Minor party and independent candidates go directly to the general election once they have satisfied the nominating convention requirements. However, because minor party candidates no longer have to receive 1% of the votes cast at the primary in order to advance to the general election, the number of signatures required is increased from 200 to 1000 for President, U.S. Senate, or statewide office, and from 25 to 100 for a legislative or local office. Minor party and independent candidates may begin collecting signatures in February. A minor party or independent candidate may not be a registered member of a major political party. Any voter who signs a minor party or independent candidate nominating petition cannot be a registered member of a major party and cannot vote a party ballot in the primary because he or she is deemed to have already participated in the partisan primary. A voter who signs a nominating petition may only vote a nonpartisan ballot, which includes only ballot measures and nonpartisan offices.

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### **Nominating Conventions**

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A major party is prohibited from participating in the primary election and must instead nominate its candidates using the nominating convention process for minor party and independent candidates if it adopts rules:

- prohibiting unaffiliated voters from participating in its primary; or
- requiring information that could link an unaffiliated voter to the party ballots he or she voted.

If a party adopts a rule requiring information that could link an unaffiliated voter with the party ballot he or she voted, the party is prohibited from participating in the primary election for two years. However, it is unclear whether the party is allowed to participate after the two years has passed. A voter who signs a major party nominating petition may only vote a nonpartisan ballot at the primary because he or she is deemed to have already voted in the partisan primary.

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### **Qualifying Primary**

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If every major party either prohibits the participation of unaffiliated voters or requires information that could link unaffiliated voters with the party ballots they voted, no nominating primary may be held. Instead, a "qualifying" primary will be held. Each voter, regardless of party affiliation, may vote for any candidate listed on the ballot. Two candidates for each office qualify for the general election by becoming the two candidates who receive the most votes and receive at least 1 percent of the total votes cast for the office. References to "nominating" procedures are changed to "qualifying" procedures.

### Party Affiliation:

On the declaration of candidacy, the candidate may identify a major or minor political party that best approximates his or her political philosophy. Party affiliation information is simply to provide voters a brief description of each candidate's political philosophy, and cannot be construed as an endorsement or nomination by that political party.

If a court declares that a political party has the right to control the use of its name, thereby preventing candidates from self-designating party affiliation in a declaration of candidacy, candidates may instead submit a three-word description best approximating his or her political philosophy. Party affiliation or political preference information is listed on the primary and general election ballots, but may not impact how the primary is conducted, the canvassing of ballots, the certification of results, or the number of candidates for whom a voter may cast a vote.

Filling Vacancies:

The process for filling vacancies on a major party ticket, or for filling vacancies caused by the death or disqualification of a minor or major party candidate are both repealed. Between the regular filing period and six weeks before the primary, if there is a void in candidacy for a partisan or nonpartisan office because no one filed during the regular filing period, a special three-day filing period is reopened. If a partisan or nonpartisan office that was not previously scheduled to be on the ballot suddenly becomes vacant sometime between the regular filing period and six weeks before the primary, a special three-day filing period is reopened and the position appears on the primary ballot. If a void in candidacy for a partisan occurs within six weeks of the primary, the election lapses and the office is stricken from the ballot.

Minor Parties and Independent Candidates:

Minor and independent candidates for all offices except President and Vice President are treated the same as major party candidates. President and Vice President nominations must still use the nominating convention process.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.